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8 Attorneys for Relators, Toi and Jeffri Bolton

IN THE U. S. DISTRICT COURT FOR THE
DISTRICT OF ARIZONA

12 Regina Calisesi; Toi and Jeffri Bolton
United States of America Ex Rel

V.

14 Hotchalk, Inc.; Concordia University;
15 University of Mary; Edward Fields;
16 James Cheshire and
Mark Zinselmeier

CASE NO. 2:13-cv-01150-NVW

TOI AND JEFFRI BOLTON'S
FIRST AMENDED
QUI TAM COMPLAINT

18 Relators Toi and Jeffri Bolton, on their own behalf and on behalf of the United
19 States of America, bring this suit pursuant to 31 U.S.C. §3729, et seq., against
20 Defendants HotChalk, Inc. ("HotChalk"), Concordia University ("Concordia"),
21 University of Mary ("U. Mary"), Edward Fields, James Cheshire and Mark Zinselmeier.
22 This suit concerns violations of the False Claims Act ("the Act") as a result of false
23 claims and statements submitted by Defendant Institutions to the United States
24 Department of Education ("DOE") for the purpose of participating in federal programs
25 for financial aid for students at Defendant Institutions' post-secondary internet-based
26 degree programs.

I. PARTIES

28 1. Relator Toi is a resident of Arizona and is a United States citizen. She was

EXHIBIT A

1 | employed by HotChalk during the periods relevant to this suit.

2 2. Relator Jeffri Bolton (“Bolton”) is a resident of Arizona and is a United
3 States citizen. She was employed by HotChalk during the periods relevant to this suit.

4 3. Defendant HotChalk is a Delaware corporation with its principal offices
5 at 1999 S. Bascom Avenue, Suite 1020, Campbell, California 95008. It is registered to
6 do business in Arizona. It may be served with summons and process by serving its
7 registered agents The Company Corporation, 2711 Centerville Rd., Suite 400, Wilmington,
8 DE 19808 and ISL Inc., 300 W. Clarendon Avenue, Suite 240, Phoenix, Arizona 85013.

9 4. Concordia is a non-profit university with a location in Portland, Oregon.
10 Its registered agent is Charles E. Schlimpert, 2811 NE Holman Street, Portland, Oregon
11 97211.

12 5. U. Mary is a non-profit university with its principle place of business is
13 Bismark, North Dakota. It may be served with summons and process by servings its
14 registered agent Elizabeth S. Condic, 7500 University Drive, Bismarck, North Dakota
15 58504-9634.

16 6. Defendant Edward Fields (“Fields”) resides in California and may be
17 served at 14810 Clara St., Los Gatos, CA 95032-1702.

18 7. Defendant James Cheshire (“Cheshire”) is an individual who resides in
19 Arizona. He may be served at his place of employment, 4129 E. Van Buren, Suite 200,
20 Phoenix, AZ 85008.

21 8. Defendant Mark Zinselmeier (“Zinselmeier”) is an individual who resides
22 in Arizona. He may be served at his place of employment, 4129 E. Van Buren, Suite
23 200, Phoenix, AZ 85008.

II. JURISDICTION AND VENUE

25 9. This suit is brought pursuant to the Federal False Claims Act, 31 U.S.C.
26 §§ 3279, et seq. The case presents a federal question under the Act, and thus original
27 jurisdiction over the matter exists pursuant to both 28 U.S.C. § 1331 and 31 U.S.C. §
28 3732, the latter of which specifically confers original jurisdiction on this Court for

actions brought pursuant to 31 U.S.C. § 3730.

10. Further, this Court has *in personam* jurisdiction over the Defendants pursuant to 31 U.S.C. § 3732(a), which authorizes suit to be filed in any judicial district in which a defendant, or multiple defendants can be found, reside, transact business or wherein any act under 31 U.S.C. § 3729 occurred. Since Defendants Cheshire and Zinselmeier both live and work in the Arizona District, and because acts complained of herein occurred in this District, jurisdiction is proper.

11. Pursuant to 28 U.S.C. § 1391(b) and (c) and 31 U.S.C. § 3732(a), venue is proper in the United States District Court for the District of Arizona because (1) HotChalk is a corporation with its principal offices located in Phoenix, Arizona; (2) HotChalk maintains and operates an online program within this District; and (3) many of the acts that form the basis of this Complaint occurred in the Arizona District.

III. PLEADING SPECIFICS

12. For continuity and flow purposes, Relators will not include paragraphs in each section of this pleading incorporating previous pleadings into the section. However, this pleading is intended to be read in its entirety with all previous paragraphs related to and supporting all subsequent paragraphs so that individual sections are not to be considered individually, but as part of the pleading as a whole.

13. Relators in this case do not provide information based upon public disclosure. Instead, Toi and Bolton are each an original source and each of them have direct, personal knowledge of the matters alleged herein.

IV. *QUI TAM* ACTION AND TITLE IV

14. The United States is no stranger to fraud perpetrated against it by those claiming to do honest business with the government. Over 150 years ago, Abraham Lincoln signed the False Claims Act into law, mainly as a vehicle to bring U.S. civil war defense contractors to justice for fraud perpetrated against the government during the war. In the subsequent century, the law was modified. The last major modification occurred in 1986, when President Reagan and the Congress amended the Act to

1 strengthen the *qui tam* provision so that the law was more effective in prosecuting parties
2 for procurement fraud and government waste in the 80's. In the 28 years since then, \$6
3 billion has been recovered for the U.S. Treasury as a result of claims made under the
4 Act.¹

5 15. The Act prohibits any "person" from "knowingly present[ing], or caus[ing]
6 to be presented, to an officer or employee of the United States Government . . . a false
7 or fraudulent claim for payment or approval." 31 U.S.C. 3729(a)(1). The Act also
8 prohibits a variety of related deceptive practices involving government funds and
9 property. 31 U.S.C. 3729(a)(2)-(7). A "person" who violates the FCA "is liable to the
10 United States Government for a civil penalty of not less than \$5,500 and not more than
11 \$11,000, plus three times the amount of damages which the Government sustains." 31
12 U.S.C. 3729(a).

13 16. The Act further empowers Plaintiffs, referred to as "Relators" in *qui tam*
14 actions, who possess information regarding the false or fraudulent claims to bring an
15 action on behalf of the United States, and to share in any recovery for their efforts.
16 Pursuant to the Act, Relators Toi and Bolton seek to recover on behalf of the United
17 States, damages and civil penalties arising from false and improper claims for payment
18 that Defendants submitted, or caused to be submitted, in connection with student loan
19 applications under Title IV of the Higher Education Act of 1965 ("HEA") from at least
20 August 1, 2009, to the date of filing of this complaint.

21 17. Chapter 28 of Title IV of the Higher Education Act regards financial
22 assistance to help students pay for higher education. The purpose of Chapter 28 is to
23 provide grants, loans, money to States, assistance institutions of higher education and
24 special programs to make postsecondary education available to qualified students. 20
25 U.S.C. § 1070 (2009). In obtaining assistance from the Department of Education

27 1 B. Nathaniel Garrett, Editor-in-Chief, University of Cincinnati Law Review, "150th
28 Anniversary of the False Claims Act," March 4, 2013, University of Cincinnati Law Review
Blog.

1 (“DOE”), institutions of higher learning are required to enter into Program Participation
2 Agreements (“PPAs”) 20 U.S.C. §1094 (2009).

3 18. All PPAs “shall condition the initial and continuing eligibility of an
4 institution to participate in a program upon compliance with the following
5 requirements:”

6 “(20) The institution will not provide any commission, bonus, or other
7 incentive payment based directly or indirectly on success in securing
8 enrollments or financial aid to any persons or entities engaged in any
9 student recruiting or admission activities or in making decisions regarding
the award of student financial assistance, except that this paragraph shall
not apply to the recruitment of foreign students residing in foreign
countries who are not eligible to receive Federal student assistance.”

10 “(22) The institution will comply with the refund policy established
11 pursuant to section 1091b of this title.”
12 20 U.S.C. § 1094(a)(2009).

13 19. An institution that participates in Title IV programs must enter into a
written PPA. Participation is conditioned upon initial and continued compliance with
14 the operative statutes, regulations, and any additional conditions specified in the PPA.
15 34 CFR 668.14(a)(1) (1994). The institution agrees that it will comply with all statutory
16 provisions of, or applicable to Title IV. 34 CFR 668.14(b)(1) (1994).
17

18 20. An eligible institution under Title IV may contract with a “third party
servicer” to “administer, through either manual or automated processing, any aspect of
19 the institution’s participation in any Title IV HEA program...” 34 CFR 668.2 (1994). In
such a third party contract, the third party servicer “...shall agree to comply with all
21 regulatory provisions of or applicable to Title IV of the HEA, all regulatory provisions
prescribed under that statutory authority, and all special arrangements, agreements,
22 limitations, suspensions, and terminations entered into under the authority of statutes
23 applicable to Title IV of the HEA...” 34 CFR 668.25(a) and (c)(1) (1994).
24

25 21. Defendant HotChalk is a third party servicer, hired by Defendants
Concordia and U. Mary, to administer their Title IV participation. HotChalk acted by
26 and through its officers/managers Defendant Edward Fields (“Fields”), Defendant James
27
28

1 Cheshire (“Cheshire”) and Defendant Mark Zinselmeier (“Zinselmeier”). When
2 administering Concordia and U. Mary’s Title IV Programs, HotChalk routinely violates
3 the law, as well as institutions’ PPAs, by knowingly compensating its enrollment and
4 admissions employees based upon the numbers of students enrolled.

5 22. Concordia and U. Mary knew about HotChalk’s violations but allowed
6 HotChalk to violate the PPA. Further, Concordia and U. Mary falsely certified that they
7 were obeying, and would obey, Title IV’s incentive compensation ban, when they were
8 not and are not in compliance with that ban. They knew their statements to the U.S. were
9 false when they made them. Every year, Concordia and U. Mary knowingly and falsely
10 certified that they were complying with 20 U.S.C. § 1094(a)(20) by promising that they
11 are not, and that they will not, provide any commission, bonus, or other incentive
12 payment based directly or indirectly on securing enrollments to any person engaged in
13 student recruiting or admission activities.

14 23. In fact, both institutions routinely and knowingly compensate and award
15 HotChalk based on the numbers of students enrolled. Numerous times every year, the
16 institutions submit and cause students to submit loan applications to the DOE that are
17 false and fraudulent in at least two ways: (a) Concordia and U. Mary knowingly use, and
18 cause students to use, false annual certifications of compliance with the PPAs, which are
19 necessary prerequisites to their eligibility for Title IV funds; and (b) in each and every
20 loan application, Concordia and U. Mary falsely certified that they are in compliance
21 with all statutory and regulatory requirements on which program eligibility and payment
22 are conditioned, misrepresentations that they know to be untrue because of their ongoing
23 knowing and intentional noncompliance with the incentive compensation ban. This
24 noncompliance is carried out by Concordia and previously by U. Mary through and with
25 the active participation and assistance of HotChalk.

26 24. Concordia and U. Mary engage in substantial misrepresentations of the
27 nature of their educational programs by deliberately concealing from students and
28 prospective students the very existence of HotChalk, allowing HotChalk to provide a

1 "turnkey partnership opportunity" - disguised as Concordia or U. Mary- consisting of
2 recruitment, enrollment and admission, financial aid, curriculum and online course
3 instructors. Defendants also engage in substantial misrepresentations concerning offers
4 of scholarships to pay all or part of a course charge by falsely and deceptively offering
5 non-existent "scholarships" or grants to make up for any shortfall between the course
6 charge less available financial aid the student's ability to pay.

V. FACTUAL BACKGROUND

8 25. Defendant HotChalk is a for-profit operator of an online "university." It
9 also operates a call center, through which it poses as Concordia and U. Mary recruiting
10 and admissions office. Students applying to the institutions never know that they are
11 dealing with a completely different company. Through its Phoenix, Arizona call center,
12 HotChalk has enrolled thousands of post-graduate students in its purported online
13 courses.

14 26. Edward Fields (“Fields”) founded HotChalk and is its CEO. James
15 Cheshire (“Cheshire”) is HotChalk’s Assistant Director of Admissions who was
16 promoted to Director of Admissions. Mark Zinselmeier (“Zinselmeier”) is HotChalk’s
17 Senior Vice President of Operations. Michael Dearring (“Dearring”) is HotChalk’s
18 Floor Manager and was Toi’s immediate supervisor. Dr. Mary Jane Pearson (“Pearson”)
19 is HotChalk’s Vice President of Curriculum & Academic Affairs. Messrs. Fields,
20 Cheshire, Zinselmeier and Dearring are all located in Phoenix. Pearson’s office is
21 located in Campbell, California.

22 27. HotChalk is a privately held, for-profit corporation. Its operations include
23 a call center in Phoenix, Arizona, through which it aggressively solicits customers; i.e.,
24 students, on behalf of the Defendant Institutions from a "boiler room" sales-floor
25 environment. HotChalk boasts that "Making the seven figure investment to grow your
26 programs online is risky - we eliminate the risk. From marketing and recruitment to
27 staffing the online Enrollment, Student Services and Adjunct Faculty departments, we
28 deliver risk-free results." It further states that, "Our trained Enrollment Specialists will

1 faithfully represent your school and programs, identify potential students whose
2 academic goals and career aspirations align with your offerings, and deliver fully
3 documented applicants to you, per your specifications."

4 28. HotChalk is not an educational institution but is a third-party servicer as
5 defined by 34 C.F.R. § 668.2 and hence, its activities are subject to 34 C.F.R. § 668.25,
6 which governs third party servicers. HotChalk also is not an accredited provider of
7 academic degrees, courses or texts and is not accredited in any way in regard to any
8 activities associated with a post-secondary educational institution except student
9 recruitment. Despite the fact that it is not an education institution but is merely a
10 third-party servicer, HotChalk openly touts that it provides a "unique, turnkey
11 partnership opportunity which removes the barriers to growing your degree programs
12 online." HotChalk indeed provides what it describes as "all Adjunct Faculty" who it
13 claims "participate in weekly professional development calls and receive performance
14 feedback from their students via individual course assessments." These "adjunct faculty"
15 personnel are actually employees of HotChalk's Campbell, California office who operate
16 without oversight from or meaningful accountability by the Defendant Institutions. In
17 essence, when a student enrolls in a U. Mary or Concordia online curriculum, s/he does
18 so unwittingly through HotChalk, and receives his or her "education" from HotChalk -
19 not from U. Mary or Concordia. Defendant Institutions have simply allowed HotChalk
20 to use their name, accreditation status and program participation.

21 29. As of May 30, 2013, HotChalk had enrolled 2,405 students into the online
22 M.Ed. it marketed and operated under the Concordia name as Concordia's "turnkey"
23 servicer and its activities using the Concordia name are ongoing. As of April 17, 2013,
24 HotChalk had enrolled several hundred students into the online masters degree in nursing
25 it marketed and operated under the U. of Mary name as that school's "turnkey" servicer.
26 The relationship between U. of Mary and HotChalk terminated on April 17, 2013. Each
27 of the students enrolled by HotChalk in its online iterations of Concordia and U. Mary
28 programs represents a separate violation of the FCA.

1 30. Defendants HotChalk, Fields, Cheshire and Zinselmeier were well aware
2 of the incentive compensation ban and spoke openly to HotChalk employees of
3 implementing "ways around" the ban. HotChalk's Vice President of Enrollment, Thomas
4 Corbett, who conducted the pre-employment interview of Calisesi for the position of
5 enrollment specialist, was employed at University of Phoenix when that company was
6 a defendant in a qui tam suit and paid approximately \$75 million to settle allegations of
7 its violations of the incentive compensation ban.

8 31. Although both Defendant Institutions had existing online programs prior
9 to contracting with HotChalk, each allowed HotChalk to create its own, separate online
10 post-graduate degree programs together with the enrollment and financial aid operations
11 necessary to provide students for those programs. Using its clients' names with the
12 clients' knowledge and consent, HotChalk conducts the full array of operations or
13 functions in regard to post-secondary educational student recruitment, enrollment,
14 financial aid, admissions and/or other activities. HotChalk's enrollment specialists enroll
15 students in HotChalk's online degree programs which HotChalk marketed as "Concordia
16 University" or "University of Mary."

17 32. Consistent with HotChalk's "turnkey partnership opportunity," each
18 Defendant Institution allowed HotChalk to set up its own versions of their websites,
19 albeit using different tuition rates in violation of 20 U.S.C. § 1094(c)(3)(A) and 34
20 C.F.R. § 668.73. HotChalk also touts this as one of its "services:" "Our Engineering team
21 will deliver seamless integration with your existing Learning Management System, or
22 assist in the selection and deployment of an industry-standard LMS."

23 33. In violation of 20 U.S.C. § 1094(c)(3)(A) and 34 C.F.R. § 668.73, with
24 respect to U. Mary, a student who enrolled directly with U. Mary in 2012 paid a fee of
25 \$450 per credit hour while a student enrolling in 2012 through
26 <http://online.umary.edu/admissions/tuition> - the U. Mary website operated by HotChalk
27 - paid \$750 per credit hour. In either event, the money was paid to U. Mary which in turn
28 paid a portion of it in the form of incentive compensation to HotChalk. U. Mary paid

1 HotChalk for each student enrolled by HotChalk - a direct violation of the incentive
2 compensation ban by U. Mary.

3 34. In the case of Concordia, each student's tuition money was paid to
4 Concordia which in turn paid a portion of it in the form of incentive compensation to
5 HotChalk. Concordia paid HotChalk for each student enrolled by HotChalk - a direct
6 violation of the incentive compensation ban by Concordia.

7 35. In violation of 20 U.S.C. § 1094(c)(3)(A) and 34 C.F.R. § 668.73, the
8 Defendant Institutions allow HotChalk to operate from its Phoenix call center to use
9 deceptively named email addresses for HotChalk's enrollment specialists, including
10 Relators, with the domain names of "@education.cu-portland.edu" and
11 "@online.umary.edu." It also deceptively provides its customers (students) with Portland
12 and Bismarck area codes (where the Defendant Institutions are located) to reach the
13 HotChalk enrollment specialists. The enrollment specialists are instructed not to say they
14 are in Phoenix and to lie about their physical location if asked. The enrollment specialists
15 also are instructed never to say they are employed by HotChalk or even to identify
16 HotChalk in any way. Instead, the enrollment specialists are to say they are "with" U.
17 Mary or "with" Concordia. Each enrollment specialists is assigned to peddle degree
18 programs for only one of these two institutions, presumably to avoid any slip-ups.

19 36. Relators Toi and Bolton were previously employed by Defendant HotChalk
20 as enrollment specialists. Toi was an Enrollment Specialist ("Specialist") for Defendant
21 Concordia, and Bolton was a Specialist for U. Mary. Toi's employment commenced on
22 December 15, 2011 and ended November 5, 2012. Bolton's employment commenced on
23 February 27, 2012 and ended February 4, 2013. Relator Calissesi was employed by
24 Defendant HotChalk as a Specialist for the defendant institutions from October 25, 2010
25 through February, 2014. All Relators worked at HotChalk's Phoenix, Arizona call center
26 located at 4129 East Van Buren, Suite 240, Phoenix, Arizona 85008. As Specialists for
27 HotChalk, Relators witnessed HotChalk's violations firsthand.

28 37. Specialists, such as Relators, are Defendant Institutions' "recruiters" and

1 are responsible for recruiting applicants for admission, including securing and managing
2 new inquiries, achieving enrollment and start rate goals, participating in appropriate
3 recruitment and enrollment activities. An enrollment specialist must stay in constant
4 contact with potential students during the entire recruitment and enrollment process.

5 38. An enrollment specialists' salary increases, number of stock options, and
6 award of other incentives are all based on HotChalk's relentless and exclusive focus on
7 the number of new students an enrollment specialist is able to recruit, and thus, are in
8 direct violation of the Title IV incentive compensation ban.

9 39. Specialists are instructed to create a false sense of urgency on the part of
10 prospective students. For example, enrollment specialists are required to tell prospective
11 students that if they "sign up" now for "this cohort" they will receive a free iPad and
12 textbooks. The enrollment specialists were further instructed, in printed instructions, not
13 to call the iPad and textbook give-away "free" but to say it is "included" and not to refer
14 to this as a "promotion" but as a "pilot program." This activity, and that more fully
15 discussed below, directly violates 34 C.F.R. § 668.14(b)(22)(iii)(A) which defines an
16 "incentive payment" as "a sum of money or something of value."

17 A. TOI AND CONCORDIA

18 40. When she interviewed at HotChalk, Toi had fifteen years of experience in
19 college admissions, including, but not limited to, working for the University of Phoenix.
20 When she applied for her position as a Specialist at HotChalk, she interviewed for her job
21 with Cheshire and Candice Childress (White). Cheshire told Toi that he had been an
22 Enrollment Specialist and a manager at the University of Phoenix.

23 41. Toi requested a \$50,000.00 yearly salary at HotChalk. HotChalk could not
24 pay her the salary she requested, but Cheshire told her that, if she "performed at
25 HotChalk as well as you performed for the University of Phoenix, HotChalk will give
26 you a \$5,000 salary increase in ninety days." It was HotChalk's standard procedure that
27 Specialists were required to meet an enrollment quota. Throughout Toi's employment
28 the Specialists were given tickets to football games, gift cards, lunches from various

1 local restaurants and other such incentives to meet and exceed their enrollment quota.

2 42. Cheshire told Toi that compensation was much the same as University of
3 Phoenix, but "better" in that HotChalk had more frequent "reviews for increases" and
4 that the Specialists at HotChalk were given stock options as well as other "really cool
5 incentives." These incentives were reiterated when HotChalk called to make the
6 "official offer" of employment to Toi. Toi accepted the employment offer and did
7 receive her first \$5,000 salary increase after she had worked at HotChalk for over five
8 months. She discovered that other employees had received the same compensation deal
9 she received.

10 1. TRUE COMPENSATION SCHEME

11 43. Toi did not receive a salary with reviews based upon her work habits,
12 attendance, etc. Her salary depended upon the number of people she enrolled, not the
13 number of hours she worked helping people with their enrollment. Cheshire and
14 Deloatche both explained the means by which compensation was paid to Specialists:
15 First and foremost, compensation depended upon the number of students the Specialist
16 enrolled. The number of students a Specialist enrolled was not counted week to week.
17 Enrollment numbers were counted over time and making the required number of
18 enrollments entitled Specialists to make more money over time and allow them to keep
19 their jobs. In fact, HotChalk's management made it clear to all Specialists that they were
20 salespeople who were expected to meet quotas and that each was subject to termination
21 if he/she did not meet the sales quotas.

22 44. There were different incentives to make the quotas. Until June, 2012, all
23 Specialists were paid an additional \$100 for each student who graduated from the
24 Concordia program. After that point, Zinselmeier stated that the \$100 bonus per
25 graduate paid to Specialists was being discontinued. Toi signed a document that
26 explained the discontinuation in generalities. Though she was not given a copy, she was
27 told that the document went into her employee file.

28 45. Around the same time, in June or July of 2012, HotChalk introduced the

1 new policy of pay being based upon "core values" or " core competencies." Zinselmeier,
2 who was by then Vice President of Enrollment, told Specialists on the sales floor that,
3 because of a lawsuit against the University of Phoenix, HotChalk could no longer
4 compensate Specialists for enrollments. He said that HotChalk was therefore changing
5 its review process and their reviews would be based purely upon "soft skills." He called
6 these "soft skills" reviews "core competencies" or "core values" reviews. The "core
7 competencies" were: (1) Adaptability/Flexibility; (2) Be Happy, No Drama; (3)
8 Communication; (4) Results Focus and (5) Sense of Urgency.

9 46. During the new pay scheme roll out, Zinselmeier and other HotChalk
10 management frankly told Specialists that HotChalk specifically formulated this "core
11 competencies" review to "get around the incentive compensation ban." The pay scheme
12 is specifically designed to appear to measure Enrollment Specialists' performance for
13 meeting or exceeding "core competencies" with artificial performance ratings on "soft
14 skills." The "soft skills" language in the new review forms allowed HotChalk, at least
15 on paper, to stay away from reviewing Specialists based on enrollment numbers.

16 47. In the weeks that followed however, Specialists we were regularly
17 reminded by ALL management, in both individual team huddle meetings and openly on
18 the floor, "Your performance is being judged by numbers...don't lose sight of that
19 reality." It was a constant verbal campaign to remind Employees of the truth that they
20 could not put in writing. Hotchalk was very careful not to put anything in writing.
21 However, Fields and management personnel made no secret of the fact that Specialists
22 would receive good ratings on these "core values" so long as they were meeting their
23 sales quotas. If they did not meet the sales quotas, they would not receive good ratings
24 on "core values."

25 48. Hotchalk's management was very loose with language that clearly showed
26 their effort to beat the incentive compensation ban laws. It was not unusual to hear them
27 use the word "reward", or the phrase "get around." Zinselmeier or Fields, at all-hands
28 meetings where they were rolling out new policies, would openly say "Our attorneys

1 have found a way..." To get around the incentive compensation ban. They never had
2 any qualms about referring to the University of Phoenix or EDMC lawsuits directly when
3 making their points. In May, 2012, Zinselmeier said that, when HotChalk rolled out the
4 new review practices,

5 "We are having to make some changes to our review process. I know
6 many of you are overdue for your reviews but thanks to the lawsuit won
7 against University of Phoenix our lawyers had to help us put together a
8 new review process so that the language doesn't reflect that we are
9 reviewing based on numbers. But make no mistake about it, this is a sales
floor and you are sales people, and nothing about your job has changed.
We have numbers to make and if you aren't making those numbers this
isn't the place for you. What you are about to see is a change in 'language'
but we all know what is really expected."

10 49. He was referring to a PowerPoint presentation about to be presented by
11 Dominick, a trainer whom they hired from the University of Phoenix.

12 50. After the "soft skill" roll out, during a one on one meeting (when
13 management would review Specialists' phone calls or go over their numbers
14 individually) with Dearring, Toi had a frank conversation about the "smoke and mirrors"
15 of the new review policy. Dearring admitted that the managers had been told "that they
16 were to make sure their team was clear, despite the change in the review criteria made
17 at the urging of their lawyers, that no one had better make the mistake of thinking their
18 pay increase was tied to anything other than enrollment numbers."

19 51. The Assistant Director of Admissions would go to each Enrollment
20 Specialist's desk several times a week to go over his or her "pipeline," i.e., the leads on
21 which he or she was working. Each Specialist was asked to give his/her anticipated
22 "high" and "low" number of enrollments for that 5 week cycle. They were reminded in
23 their weekly "team huddle" that they were in sales. They were taught to implemented
24 sales strategies designed to get a prospect to remain on the phone with them, even when
25 the prospect tells them they do not have time to talk. Specialists were expected to reach
26 a certain number of hours of "talk time" and "dials" each day.

27 52. If a Specialist did not meet the required enrollment goal, he/she was "put
28 on plan," which meant probation. By being "put on plan," he/she was given the next

1 five-week cycle to meet the required quotas. If he/she did not meet the quotas, he/she
2 could be terminated, forfeiting some or all of his/her stock option incentives. Being "put
3 on plan" was a disciplinary tool that was implemented for failure to meet the required
4 enrollment quota. If Specialists did achieve their quota, they were given an increase in
5 their salary after their review and got to keep the stock options awarded by the company.

6 53. At the close of every five week cycle, the enrollment and management staff
7 held what was referred to as an "all hands meeting." Fields primarily conducted the first
8 half of these meetings by way of video conference. He reviewed extensive numbers in
9 regard to enrollments, profit margin and other goal oriented information. Zinselmeier
10 conducted the second half of the meeting by acknowledging the Specialist with the
11 highest number of enrollments. He would also reiterate the minimum number of
12 enrollments needed from each Specialist in order to attain the projected profit reviewed
13 by the CEO in the first half of the meeting.

14 54. For every enrollment, a celebratory email was sent to the entire floor
15 indicating the number enrollment it was for the cycle and the name of the Specialist to
16 whom it belonged. That Specialist was celebrated on the floor by their clicking a mouse
17 connected to a 50" inch television screen displaying the number enrollment and the
18 sounds of ringing bells for all to hear and see. HotChalk managers would "hit the
19 button" whenever a student enrolled. An email was sent to the entire team, including
20 upper level managers, to announce that a student has enrolled, and the Specialist who
21 enrolled the student went to the big screen television with a keyboard and "hits the
22 button" to add to HotChalk's count of enrolled students for that cycle. When the button
23 was pushed, everyone clapped, yelled, whistled, hooted, and hollered.

24 55. Every Specialist received a salary, stock options for HotChalk stock and
25 other incentives for meeting enrollment goals for each cohort (five week period). If a
26 Specialist excelled at enrollments, he or she received more stock options, and the number
27 of shares was tied directly to the number of students enrolled.

28 56. HotChalk had competitions between teams for the highest number of

1 enrollments. The winning team received gift cards, an all expenses paid trip to Las Vegas
2 and football tickets. HotChalk often had lunches brought in as well. Fields often sent
3 emails to the Specialists encouraging them to "raise the bar" or "win" by enrolling more
4 students.

5 57. On September 11, 2012, Fields sent an email to the Specialists in Phoenix
6 rewarding them with Arizona Cardinals tickets for a "record setting Back To School
7 season." On September 13, 2012, he sent an email offering an \$80 gift card as an
8 alternative to the Cardinals tickets.

9 58. All Specialist salary increases and other incentives were based solely upon
10 the number of students he/she could enroll in a five week cycle. The minimum
11 enrollment requirement for each Specialist was 3-5 enrollments per cycle. Although
12 HotChalk was designed to appear to be an online education resource, it was actually a
13 sales driven company where enrollment and profit were the primary goals.

14 59. Zinselmeier and Cheshire would openly state, "Make no mistake, we are
15 in sales. This is a sales floor. This is what you have to get." They would further say,
16 "Imagine how much money you will make and how 'wealthy' you will become from your
17 HotChalk stock options."

18 60. On September 4, 2012, HotChalk informed the Enrollment Specialists that
19 their compensation scheme would change yet again. This time, they were transformed
20 into "hourly" wage employees so that they could have the opportunity to earn more
21 money in the form of "overtime" if they met or exceeded their quotas of new
22 enrollments. HotChalk had Specialists sign a document entitled "Pay Structure Change"
23 outlining the new wage policy, which was signed by Wanda DeLoatche at HotChalk.
24 Because of this, overtime became another incentive to encourage Specialists to sell the
25 product. It wasn't real overtime as dictated by the Fair Labor Standards Act, but the
26 right to work future overtime related to how many sales the specialist had in the
27 preceding a five week period.

28 61. If a Specialist met his enrollment quota, he would be eligible to work up

1 to ten additional hours per week for the next cycle, for an additional 50 hours of hourly
2 pay. If a Specialist worked overtime and met his quota during that cycle, he was
3 authorized to work overtime the next cycle. That would continue until he did not make
4 his quota. At that point, the right to work overtime was revoked until the Specialist
5 increased his numbers to the minimum enrollment quota. Overtime was designed to
6 reward Specialists who maintained a high number of enrollments by paying them more
7 money.

8 62. HotChalk management knew that the overtime scheme was a violation of
9 the incentive compensation ban because Cheshire and Zinselmeier, as well as Dearing
10 and Ken Cook openly told Specialists that the overtime program was being implemented
11 to "get around" the incentive compensation ban. Whether a Specialist was entitled to
12 overtime pay was determined by HotChalk solely on the basis of whether the Specialist
13 met or exceeded the enrollment quota. Further, "overtime pay" was not time and a half,
14 as mandated by the Fair Labor Standards act. It was up to 10 additional hours of straight
15 time.

16 63. Specialists were switched from salary to hourly so that HotChalk could
17 more directly reward them for the number of enrollments by putting more money directly
18 into their pockets. The overtime was limited to ten hours per week. HotChalk hired a
19 new senior VP of finance, John Lambert, who wanted to control the money being spent
20 on labor. Overtime was set up to kick in after forty hours.

21 64. Congress, the DOE and the Defendant Institutions' PPAs ban incentive
22 payments except the "payment of fixed compensation, such as a fixed annual salary or
23 a fixed hourly wage, as long as that compensation is not adjusted up or down more than
24 twice during any twelve month period, and any adjustment is not based solely on the
25 number of students recruited, admitted, enrolled, or awarded financial aid."

26 65. Selectively granted overtime violates this ban in three ways: First, it is not
27 a "fixed hourly wage" but is instead a variable hourly wage of one and a half times the
28 "normal" hourly rate of the Specialist. Second, it was an adjustment that occurred "more

1 than twice during any twelve month period" because it was granted or denied at the end
2 of each five week enrollment cycle based on the number of students enrolled that cycle.
3 Third, whether a Specialist is allowed to work overtime at one and a half times his
4 "normal" hourly rate is determined solely on the number of students enrolled by each
5 particular Specialist, including the Relators, and on no other basis.

6 2. THE PRODUCT SOLD

7 66. HotChalk sold the M.Ed. Programs offered by Concordia University. At
8 the 2012 Christmas party, Fields said that, "Other Universities are beating our doors
9 down to do for them what we have done for Concordia University." He said that the
10 upcoming year would be an exciting one of growth and that those Specialists "on the
11 ground floor" would be the greatest beneficiaries of HotChalk's growth.

12 67. HotChalk would train a Specialist class of around seven people. Dr.
13 Pearson would give a presentation and explained that she creates the curriculum for the
14 M.Ed. Programs, and determines what programs are offered. So, HotChalk was not
15 really selling Concordia University programs, but programs created by HotChalk and
16 using Concordia's name. HotChalk was essentially functioning as a University, under
17 the banner of a longstanding University's name. HotChalk's sales force operated almost
18 completely free of any hands on involvement from Concordia University. Even so,
19 there was still a connection between them because, now and again, HotChalk would
20 receive a rare visit from a Concordia campus employee. Specialists were told in advance
21 of the person's coming, and the Concordia representative's appearance on the sales floor
22 was minimal.

23 68. Scott Besemen, from Concordia University's campus admissions
24 department, would come in and Y-connect with a representative once in a while. Toi is
25 specifically aware of one visit to HotChalk by Concordia's campus President, with some
26 executive board members. It was in the earlier part of 2012, and Cheshire asked the
27 Specialists to "dress-up for the dog and pony show." They were pulled off the phones,
28 brought to an area of the call center floor and presented to a group of well suited men.

1 Fields conducted the introductions and opening welcomes to them. The Concordia
2 representatives spoke about what a "fabulous job" HotChalk was doing for Concordia.
3 There were some joking references to "the new football field or athletic building"
4 Concordia had built as a result of the profits made from HotChalk. They also joked that
5 the new facilities should be named after Edward Fields.

6 69. The Concordia personnel spoke about the greatly increased student
7 enrollment numbers and attributed that directly to doing business with HotChalk. One
8 of them made a joking reference to the other Concordia Universities, and how jealous
9 they were that Portland had seized this opportunity with HotChalk and now had a very
10 successful and profitable online M.Ed. program. They eluded to other programs that
11 HotChalk would be rolling out on Concordia's behalf and talked up the prosperous
12 financial and record breaking future Concordia expected to have with HotChalk.

13 70. They commended the Specialists for the fabulous job they were doing.
14 Edward Fields then said, "This is what it's all about...give yourselves a hand because
15 without your hard work in the trenches, none of this would be possible." There was no
16 discussion about the quality of education being offered, or pride in any caliber of the
17 programs. It was all about "numbers and the profits." After the presentation, the
18 Concordia representatives took a quick walk through and were quickly whisked away.
19 They asked no questions about enrollment strategies and criteria.

20 71. HotChalk created an entire school under the name of Concordia, a real
21 University. HotChalk created the curriculum and hired the teachers. The teachers were
22 either HotChalk employees, or contractors, and were not associated with Concordia
23 University. The teachers were not answerable to Concordia University. Further,
24 HotChalk seemed to entirely control its own enrollment activities for Concordia and U.
25 Mary.

26 72. While HotChalk provided all aspects of the online programs under the
27 name of Concordia University, Portland, Oregon, the programs offered were
28 asynchronous and taught in a "cohort" model entirely online. The programs offered were

1 “accelerated” because the curriculum was designed to be completed in one year. The
2 classes themselves were taught one at a time, every six weeks. In 2012, HotChalk,
3 through Concordia University, began to offer Bachelor of Science online degree
4 completion programs in Early Childhood Education and another in Career & Technical
5 Education. It was a fitful start to the offering of these two programs because they were
6 ‘degree completion’ programs and a student had to have completed many prerequisite
7 classes before they could be admitted. Importantly, review of the prospective or
8 enrolled student’s transcripts for consideration of acceptance, was done completely by
9 HotChalk employees, and not at all by Concordia.

10 73. There were enrollment standards, G.P.A.’s, etc. that students had to
11 meet to qualify for the programs. However, HotChalk quickly evolved into a different
12 way of doing business. Prospective students who applied after speaking with an
13 Enrollment Specialist were screened via a writing sample that HotChalk referred to as
14 a “letter of intent.” This letter was used as a writing sample which prospective students
15 were supposed to use to express their passion for being a teacher, their desire for
16 becoming more effective, their reasons for wishing to be selected by Concordia, as well
17 as why they had chosen Concordia. Throughout 2012, the enrollment criteria changed
18 drastically.

19 74. Although Concordia University and University of Mary published
20 academic requirements for incoming students, through HotChalk, nearly every potential
21 student who completed an application and submitted a “Letter of Intent” essay was
22 admitted. HotChalk had a history of double talk when it came to the admissions
23 processes and the criteria basis for which a student had actually been admitted. No
24 student was rejected unless they were in Financial Aid default or had reached their
25 aggregate financial aid limit.

26 75. Specialists were instructed to tell the students that Concordia “selected”
27 its students, even turned away students, if their Letters of Intent were sub par or if the
28 student didn’t meet the minimum GPA of 2.75. This statement was false. Prospective

1 students were told that they could petition to be considered for admission if they could
2 explain in their Letter of Intent why they had a low GPA. The “explanation” for a low
3 GPA could be as simple as a statement tagged at the end of the Letter of Intent that said
4 something like, “I was young and partied a lot,” “It was my first time away from home,”
5 or “I was working full time while getting my Bachelors.” If the statement was enough
6 to provide an explanation for the low GPA, it was never questioned beyond that point.
7 It was a common standard sales floor joke that “If they are breathing and can get
8 through financial aid okay, they are going to be admitted.”

9 76. The Letter of Intent requirement was a joke. Even a single paragraph
10 drafted with the writing skills of an eighth grader would suffice and hardly any students
11 were denied enrollment based on their essay’s content or quality or lack thereof. The
12 letters of intent were sent to Michael Dearring first for approval. No matter how poorly
13 written, Michael always said, “I have had worse than that, put it through.” The students
14 were never rejected.

15 77. Every once in a while, Specialists would get an email from Dr. Pearson,
16 asking if the students were made aware that the Concordia program didn’t lead to
17 licensure or certification. That was a sticking point with Dr. Pearson and the only area
18 about which anyone at HotChalk ever showed any concern. The lack of licensure was
19 boldly included on the admissions application. Dr. Pearson also wanted recognition of
20 the fact noted on the prospective student’s Letter Of Intent, as well as whether the
21 student was already a licensed or a certified teacher.

22 78. Specialists were required to tell prospective students in the Bachelor’s and
23 Master’s programs that the graduation rate was approximately 90%. Specialists had no
24 way of verifying this information, but were expected to use it in their “interviews” with
25 prospective students because it led them to believe that Concordia was dedicated to the
26 students’ success and graduation from the program. With regard to the Bachelor’s degree
27 candidates, stating that Concordia had a 90% graduation rate was an outright lie because
28 Concordia had not yet had a graduating class for the online Bachelor’s program.

1 79. At the same time, HotChalk took great pains to conceal from the students
2 the fact that HotChalk existed. Every aspect of a Specialist's presentation to prospective
3 students was designed to lead them to believe that the HotChalk Specialists were
4 Concordia University employees. HotChalk wanted to ensure that prospective students
5 had no knowledge of HotChalk's existence. Specialists could not disclose that they were
6 located in Phoenix, Arizona. Specialists were expected to lead students and prospective
7 students to believe that they were located at Concordia's Porland, Oregon Campus.

8 80. HotChalk's Concordia phone number area code was a Portland, Oregon
9 area code. Specialists were strictly prohibited from even implying that they were not
10 located in Portland or that they were employees of another company. They were
11 required to answer the phone, "Thank you for calling Concordia University." The area
12 code that appeared in the caller I.D. was Portland area code "503." This was all to give
13 the appearance that Specialists were calling from Portland, Oregon. Specialists' email
14 addresses were designed to appear to be Concordia email addresses. Toi's email address
15 was toi@education.cu-portland.edu. By contrast, the HotChalk office manager's email
16 address was deb.menke@hotchalk.com. On occasion Specialists were instructed to
17 actually tell prospective students that they were in Portland. In fact, graduating students
18 who planned to travel to Portland for commencement would asked Specialists whether
19 they would be at the graduation ceremony.

20 81. Cheshire and Fields stated that HotChalk's business model was to
21 represent only non-profit, Christian schools. The general practices and approaches of
22 traditional, non-profit, regionally accredited college admissions is quite different than
23 that of a for profit education sales force. This why Fields and Zinselmeier specifically
24 seek to do business only with these faith-based, non-profit institutions.

25 82. In fact, a huge part of HotChalk's selling point was that Concordia
26 University(HotChalk) was a "Christian, private, non-profit university." Specialists were
27 instructed to point this out in every presentation to a potential student. They were
28 provided what was known as a 'rubric' that was a script guideline. Though the rubric was

1 changed frequently by the compliance director Susan, there were things specifically
2 highlighted that Specialists were always required to say. Among those things was that
3 Concordia was a faith-based or Christian, private, non-profit college. All the while,
4 HotChalk management placed high emphasis on profits, going public one day and the
5 HotChalk “family” retiring rich.

6 83. Michael Dearring, along with Cheshire, often reminded Specialists of their
7 stock options and their need to generate the profit margins that Fields needed for the
8 board and investors. Every six weeks HotChalk had an “all hands” meeting. Fields told
9 them during the “all hands” meetings that he would only work with these Christian non-
10 profit, regionally accredited colleges and that they were lined up for our services.
11 HotChalk management instructed Specialists to tell prospective students, that “we” do
12 not answer to stockholders. They were told that this was to give the impression that
13 Concordia’s first commitment is to the student, not to profits. However, according to
14 Fields, Zinselmeier and other HotChalk managers, HotChalk had investors who invested
15 capital with HotChalk. Specialists in the sales force were expected to meet minimum
16 enrollment numbers to meet the expectations of these investors so that HotChalk could
17 continue to receive capital from them. Specialists were also told that by meeting the
18 enrollment quotas, their own stock would be worth more and HotChalk could go public.

19 3. BOILER ROOM

20 84. HotChalk is a hardcore sales, numbers driven environment that is clearly
21 high-pressure and would no doubt be described as a boiler-room, pressure cooker and
22 a sweatshop sales floor call center. Specialists are under continual pressure to make the
23 numbers by any means necessary. A Specialist would be hyper scrutinized, right down
24 to how many times he went to the restroom that day, or how long it took him to get
25 coffee. Cheshire, who was promoted to the center’s Director of Admissions, notoriously
26 sweated Specialists who were not having good sales cycles to the point of exercising an
27 abusive management style.

28 85. A mandatory criteria of Specialists’ conversations with potential students

1 was to "create urgency" for the upcoming start date. Every day, five times a day
2 Specialists received a "talk time" report that monitored how much time each Specialist
3 was actively speaking to someone. The more talk time accrued, the more likely the
4 Specialist would be permitted to work overtime. Every day, five times a day, HotChalk
5 sent a report showing how many outgoing calls were placed by each Specialist. Daily,
6 HotChalk issued a report on how many enrollments each Specialist had for the upcoming
7 cycle.

8 86. HotChalk's aggressive sales tactics increased with the implementation of
9 the automatic dialing system. With this automatic dialing system, management increased
10 the number of times Specialists called prospective students in an attempt to reach them.
11 The excessive number of attempts were excessive, harassing, and predatory. HotChalk's
12 Specialists created such an unfavorable impression that interested candidates stated they
13 were "turned off" by the excessive phone calls and did not or no longer wished to learn
14 about the program or receive information. Although this feedback was shared with
15 management, management refused to reduce the number of times prospective students
16 were called. Specialists often received requests from prospects to have their number
17 placed on the "Do Not Call" list or to have their phone number or email address removed
18 from the database. This request was not always honored.

19 4. SCHOLARSHIPS

20 87. HotChalk had approximately ten "start dates" for each of the five-week
21 "cycles" for courses that it offered throughout the year in which students could begin
22 their degree under the Concordia University or University of Mary name. A cycle was
23 called a cohort. Although HotChalk had the schedule for the entire year, Specialists
24 were instructed to only mention the very next start date and if pressed, the start date
25 after that. They were instructed that in no case were they to disclose more than the next
26 two start dates. This policy was to create what HotChalk's sales managers repeatedly
27 referred to a sense of "urgency" and to discourage prospects from putting off
28 enrollment. If a Specialist was asked about the dates of the cohorts beyond that, he

1 would acknowledge that "there will indeed be other dates in which to enroll," but
2 would indicate that he did not know the exact dates. The purpose of this was to get a
3 prospective student to start right away so HotChalk could meet its sales goals.

4 88. When necessary to close a sale, Specialists were required to offer
5 "scholarships" which were not scholarships but were actually discounts off of
6 HotChalk's established "tuition" rates which Specialists were required to use when
7 enrolling students in its online program. These prices misrepresented the tuition
8 charges because Specialists were instructed by HotChalk management to tell some
9 prospects "that our tuition is 'flexible' for certain prospective students" or Specialists
10 were to specify a certain amount of a scholarship for others. These scholarships ranged
11 in amounts from \$500 to \$4,000. Specialists were instructed to present these to
12 prospective students to entice them to enroll in the current cycle without delay.
13 HotChalk's stated tuition pricing was a misrepresentation of the actual cost that
14 HotChalk would accept as payment for tuition. This is a misrepresentation concerning
15 the nature of the Defendant Institution's financial charges in violation of 20 USC§
16 1094(c)(3)(A) and 34 CFR § 668.73.

17 89. In early 2012, Cheshire announced, with tremendous enthusiasm, that
18 "We would be continuing the practice of the offering of 'scholarships'." The
19 "scholarships" were originally offered sporadically as a test for boosting enrollment
20 and were terrific sales tools disguised as a tuition reduction. Specialists represented
21 that the Assistant Director of Admissions had to approve the scholarship, which was
22 sometimes upward of \$4,000.00. This so called scholarship could go from \$1000.00
23 to \$4,000.00 within a matter of minutes if the student demonstrated any hesitancy to
24 enroll. Basically, the \$20,600.00 tuition could become \$16,000.00 to secure the
25 enrollment.

26 90. Specialists were trained to present this "scholarship opportunity" anytime
27 a prospective student seemed reluctant to immediately enroll in the next starting cohort,
28 or if they indicated interest in another school, or if they were stalling or delaying

1 getting all of the 'collateral' needed to complete the enrollment process. The
2 scholarship was used as an incentive to create urgency. The Specialist would put the
3 prospective student on the phone with the Asst. Director Of Admissions, who would
4 ask them several questions (the answers to which were already known), and then say
5 "if I can give you a scholarship, can you get everything we need in the next 48 hours?"
6 It was not unusual for the manager to end the conversation by reminding the student
7 that there was barely any scholarship money left and that if they didn't get everything
8 in timely, the money would have to go to someone else. This practice was referred to
9 at HotChalk as "second voice." They would tell the student that this was a part of
10 Concordia's selection process and that they were available as a second point of contact
11 for the prospective student. They also offered the fake scholarship at this time.

12 91. Michael Dearring told the Specialists that the "scholarship" came out of
13 Hotchalk's profits, not Concordia's tuition, and thus giving ultimately affected "our,"
14 his and the sales staffs', profit line in the bigger picture, which is why he started lower
15 in the amount that he offered. Cheshire and Dearring were notorious for telling the
16 prospective that if they didn't enroll immediately in the upcoming cohort, there were
17 only a couple of seats left and they probably wouldn't get in. I have heard Dearring say,
18 "The only reason this scholarship money is available to you is that we had a student not
19 get accepted and so this money is now available, and that is why it is imperative to get
20 your application, financial aid and collateral in ASAP." They would then turn the call
21 back over to the Enrollment Specialist to close the deal.

22 92. If a prospective student was willing to enroll and didn't balk in anyway,
23 no scholarship money was offered to that individual. This was reserved for a prod to
24 move a prospective student forward quicker. If a Specialist had a student that he felt
25 really needed help, like a single struggling mother or someone like that, Cheshire and
26 Dearring simply said, "That is not what scholarship money is for." This was a huge
27 part of the Hotchalk sales culture.

28 93. One specific instance of using a scholarship as leverage occurred in the

1 late spring, 2012. HotChalk was scheduling for the summer cohort and a prospective
2 student stated that she had a schedule vacation pre-planned for two weeks with her
3 family. She wanted to start in the cycle after because she knew she wouldn't be
4 focused on school. The student already sent in her Letter of Intent and a couple of
5 other required enrollment items, called collateral. She had also completed the FAFSA
6 and input Concordia's school code. When Michael Dearring made his weekly rounds
7 to sit with each person on his team to check on the status of the prospective students,
8 Toi conveyed the prospect's issues. Dearring told Toi to tell the student that, if she
9 didn't start the next cycle, she would not only lose the \$2,500.00 scholarship he had
10 offered her, but that it could affect her financial aid as well. He also said to tell her
11 that, because Concordia's teachers liked to start in the summer, there may not be a
12 cohort that she could start until after the fall. None of this was true. When Toi
13 protested that it wasn't true, Dearring said "We can't afford to lose any of the people
14 I have on the books, and she won't know better if you don't tell her."

15 94. Sometimes, other bogus strategies were implemented for the scholarship
16 offering, like completing an essay to be written for a competition. The essay
17 competition was pointless because it was not run as a valid essay competition. The
18 deadline dates were never really the deadline dates and the how, when and by whom
19 the essays would be reviewed were never clear. Specialists were allowed to continue
20 to collect the essays when the winners had already been chosen. Sometimes the
21 winners were selected and no one on the sales floor knew that this was the case and
22 management simply allowed them to keep collecting essays.

23 95. Supervisors authorized Specialists to give scholarships when they were
24 ending an enrollment cycle and were not tracking to hit their goal numbers. The
25 scholarships were supposedly designed for specific teachers, such as teachers who
26 work in a Title I school. However, HotChalk awarded the scholarships without
27 verifying whether the students met any specified criteria. In reality, the scholarships
28 were merely a discount off the tuition price that HotChalk set in the first place.

1 96. HotChalk awards the "Study Buddy Scholarship" to a student when he
2 refers someone who also enrolls and begins in the same cohort. Each referring
3 students was given a \$2,000 "scholarship." Again, this was not a scholarship, but
4 merely another gimmick to get students to refer prospects.

5 97. The online M.Ed. Program did not lead to a student's licensure or
6 certification and that information was not initially disclosed to the students. HotChalk
7 had issues with teachers being enrolled, believing that they were going to be licensed
8 or certified after completion of Concordia's (HotChalk's) M.Ed. Programs when that
9 simply was not the case. This wasn't a problem if a teacher worked for a private
10 school, such as a private Catholic school, where licensure was not a requirement.
11 Given the student's sizable investment in the M.Ed program in both cost and time, it
12 should have been disclosed to them prior to enrolling because they could end up with
13 an education that limited them solely to private schools for employment.

14 98. Specialists were always happy to get private school educators because
15 that particular issue would not come up or they could gloss over the fact that the degree
16 did not lead to licensure. On one occasion, Specialist Derrick Doss attempted on
17 several calls, to finesse the fact that the program didn't lead to certification, implying
18 to the prospective student that he could work on that aspect after finishing the program.

19 B. BOLTON AND U. MARY

20 99. Jeffri Bolton worked for The University of Phoenix as an Enrollment
21 Specialist for its Healthcare Program. HotChalk was negotiating a contract with the
22 University of Mary, located in Bismarck, North Dakota, to operate an online healthcare
23 degree program through that school.

24 100. At the University of Phoenix, Jeffri Bolton was the number one recruiter,
25 out of 250 recruiters, in converting prospective, inquiring students into enrolled
26 students. She submitted her stats and resume to HotChalk and participated in an online
27 interview via Skype with Zinselmeier. Zinselmeier specifically questioned her about
28 her stat report from the University of Phoenix, whether she felt like she would be able

1 to deliver the same enrollment results, her ability to meet HotChalk's enrollment
2 expectations consistently and whether she could work in "high pressure sales
3 environment." This was important to HotChalk because she would be their first, and
4 for a time only, designated healthcare curriculum Specialist.

5 1. COMPENSATION

6 101. Zinselmeier explained to Jeffri Bolton that HotChalk's pay scheme for
7 U.Mary was the same as that for Concordia: Each Specialist was expected to meet a
8 minimum of 3-5 enrollments every 5 week cycle and would be tracked by his
9 immediate supervisor. At the close of the first 6 months, the number of enrollments
10 would be tallied and the Specialist's salary increase would be determined based on that
11 number. The Specialist's review would be conducted by his immediate supervisor and
12 the director of admissions. The maximum increase in salary was roughly \$5000 per 6
13 months, assuming the Specialist consistently enrolled 3-5 students over that time span.

14 102. On two separate occasions, both Cheshire and Zinselmeier specified that
15 any salary increase would be predicated upon Bolton's enrollment numbers each five
16 week cycle. Zinselmeier said, "With this level of performance and enrollment activity,
17 you will be well on your way to receiving the maximum increase on your six-month
18 review." Bolton's experience in healthcare and nursing program recruitment at the
19 University of Phoenix made her HotChalk's "designated hitter" for the startup of the
20 University of Mary program. HotChalk literally had no one else who had healthcare
21 or nursing degree experience.

22 103. HotChalk started Bolton out at a salary of \$50,000.00 a year. After
23 hiring Bolton, HotChalk developed a program, similar to its Concordia program, with
24 University of Mary. The program, like the Conrdia Program, was designed to generate
25 a profit for University of Mary, as well as for HotChalk. The same enrollment
26 strategies were implemented with University of Mary that were implemented with
27 Concordia University, so that Specialists received incentives in the form of bonuses,
28 prizes, trips and other rewards, based on the number of students they enrolled.

1 104. Bolton enroll nursing candidates for University of Mary's online bachelor
2 and masters nursing programs. For months, she was the only Specialist for the
3 University of Mary. Cheshire, told her that HotChalk was banking on my nursing
4 admissions background and experience to get the ball rolling with the new program and
5 to get students enrolled. Bolton was included in all developmental meetings with
6 management staff from both HotChalk and University of Mary. Present at the meetings
7 were Bolton, Cheshire, Joanne Lassiter (HotChalk's U. Mary RN liaison) and Rachel
8 (another HotChalk U. Mary liaison). Fields, included himself in these meeting on
9 random occasions but he primarily visited the Phoenix office in person for meetings
10 with Joanne Lassiter and Rachel.

11 2. U. MARY - HOTCHALK UNIVERSITY

12 105. From February, 2012 through April, 2012, Bolton was asked to, and did,
13 develop the U. Mary administrative documents for potential students, including
14 transcript request forms, online inquiry admission forms, internal student tracking
15 software and other documents required to enroll students. She assisted with reviewing
16 ongoing developments such as the HotChalk online U. Mary website, U. Mary
17 enrollment rubric, U. Mary funding guide, and U. Mary Specialist training materials.
18 By April, while these things were in development, Hotchalk opted to have me initiate
19 enrolling students without any of the aforementioned being actually completed.

20 106. During the first month of enrolling for University of Mary, Bolton asked
21 Cheshire if she would be compensated for her efforts in generating potential students,
22 since HotChalk had not yet given her any nursing leads to contact for enrollment.
23 Cheshire responded, "Rest assured, I'll have you on the phones in no time. If you show
24 me you can hit the ground running and give me at least 30 students, I'll be sure to
25 return the favor on your six month review." By April, 2012, Bolton was on the phone
26 speaking to MSN (Master of Science in Nursing) candidates, and BSN (Bachelor of
27 Science in Nursing) candidates.

28 107. However, at that time, HotChalk had no processes in place to evaluate

1 student transcripts and no waiver or permissible forms. In fact, Bolton was enrolling
2 candidates into a program that did not technically exist. There was no established
3 curriculum, no teachers, no other faculty nor were there other implementations for the
4 program. It was actually a full five months later before the program actually came into
5 existence. When Bolton expressed concerns to Cheshire, he responded, "Just do your
6 part and get the students in the door. We'll cross that bridge when we get to it. I'm
7 banking on you for a big class start. You pull in the numbers and we'll do the rest.
8 Don't worry, I'll be sure to treat you right when its review time. Just hold on to them
9 as long as you can."

10 108. HotChalk was operating as an online nursing school, with the consent of
11 U. Mary, for the purpose of generating profit for both HotChalk and U. Mary.
12 HotChalk was responsible for hiring the online nursing faculty, the online marketing,
13 determining and implementing all "scholarship" programs, enrollment of students and
14 hiring sales enrollment staff. The course instructors were actually HotChalk
15 employees, not U. Mary faculty. Students who previously had contact with U. Mary
16 directly, were transferred to HotChalk as it "took over" responsibility for U. Mary's
17 online division.

18 3. THE PRODUCT

19 109. It was an absolute rule that students were not allowed to know that they
20 were actually dealing with a company called HotChalk, not U. Mary. Not only did they
21 hide HotChalk's involvement, they actively lied about it when asked on the rare
22 occasion that a student would see admissions documents that accidentally listed
23 HotChalk as their online school of attendance. Not only was Bolton not allowed to tell
24 students that they were enrolled in HotChalk classes instead of U. Mary classes, she
25 was prohibited from telling students that she was anyone other than U. Mary
26 representative.

27 110. HotChalk went to extreme measures to prevent potential students from
28 discovering the true identity of HotChalk. Specialists were not allowed to disclose the

1 true location of HotChalk. Though HotChalk was physically located in Phoenix,
2 Arizona, Specialists were given phone numbers with area codes local to the Bismarck,
3 North Dakota, where the U. Mary campus was located, to give the impression that they
4 were on the Bismarck campus. Specialists answered the phone identifying themselves
5 as U. Mary representatives. If asked, Specialists were required to outright lie to the
6 students and tell them that they were located in Bismarck.

7 111. HotChalk designed, built and operated the online U. Mary website. A
8 significant number of leads with potential student inquiries were generated by the U.
9 Mary website. As HotChalk technical specialist, Eric Chiat, explained to Bolton, when
10 a potential student accessed HotChalk's online website, spyware installed by HotChalk
11 captured their information regardless of whether they had taken the initiative to fill out
12 an inquiry form. This explained the countless times Bolton would speak with someone
13 who was frustrated because they never requested her call or any information about the
14 nursing program.

15 112. HotChalk offered four different masters nursing programs. The tuition
16 for those programs ranged from \$32,000.00 to \$60,000.00 through program
17 completion. This tuition was most often covered by student loans saddling the student
18 with an enormous amount of debt. A student who enrolled directly with University of
19 Mary online typically paid a fee of \$450 per credit hour. A student who enrolled
20 through HotChalk for the same University of Mary program paid \$750 per credit hour.
21 When Bolton asked James Cheshire about the difference in the cost per credit hour, he
22 responded, "How do you think we're going to pay for your trip to Vegas?"

23 113. University of Mary had academic requirements for incoming students.
24 Nevertheless, HotChalk accepted all potential students, even if they didn't meet the
25 GPA requirements, so long as they completed an application and submitted an essay,
26 just like the essay required for Concordia. It was extremely rare for any student to be
27 denied enrollment based on the essay's content or lack of quality. HotChalk employees
28 determine the sufficiency of the "letter of intent" with University of Mary.

1 114. Initially, Hotchalk did not accept all nursing students. However it did
2 greatly change the minimum requirement for the program and planned to move in the
3 direction of accepting all nursing candidates. The minimum GPA was changed from
4 a 2.7 to 2.5. Initially all prerequisites were required upon entering the program, this
5 changed to offering the prerequisite courses to be taken with the program. In August,
6 2012, Bolton discussed multiple times with fellow U.Mary Specialists Harlan Stone
7 and Kit McGhee, the initial difficulty of finding students who had all prerequisites.
8 James Cheshire chimed in on their conversation saying,

9 "It started out this way with Concordia. Once University of Mary sees
10 how much money we bring in for them, they'll make some major
11 adjustments to their academic criteria just like Concordia did. We're
going to send Julie [Smith] to the Bismarck campus and get some of this
straightened out. They won't be so hard headed for long".

12 115. After Julie Smith returned from her trip, there was no longer a need for
13 the letter of intent with the admissions process, the GPA requirement for the program
14 was lowered, missing prerequisites were going to be built into the students program,
15 a resume from the candidate was no longer needed and HotChalk was allowed to enroll
16 diploma nursing graduates rather than solely degree holding nurses. All of these
17 changes were negotiated and approved by U.Mary.

18 116. As long as the student met the lowered GPA, none of the other
19 miscellaneous documents mattered. Regardless of the sufficiency of reference letters,
20 applications and other hoops candidates jumped through, they were admitted. Once
21 admitted, the student would almost always obtain students loans to pay tuition,
22 particularly for the graduate nursing program because there was a lot of loan money
23 available to graduate students.

24 117. HotChalk supervisors Carl Blunt (manager of U.Mary as of October,
25 2012) and James Cheshire wanted it to appear that the applicant's low GPA was an
26 issue for "special consideration." In fact, all they did was artificially slow that
27 applicant's enrollment process to make it appear that they were making special efforts
28 on behalf of the applicant. In the end, the applicant would always be admitted to

1 U.Mary despite being under-qualified because all admissions decisions were in fact
2 made by HotChalk. Once admitted, the student would almost always obtain a student
3 loan to pay the tuition.

4 118. After qualifying a potential student, Specialists would direct the student
5 to the governmental FAFSA site to apply for financial aid. There was even a link to
6 the FAFSA site that was included in the signature block of emails to the students, so
7 that all they would have to do was click on the link and that would take them directly
8 to the FAFSA site to complete the application. There was someone at the HotChalk
9 financial aid department who interfaced with them if they needed help with their
10 student loan and financing in general. The head of that department was Silvino Tibi.

11 119. Once a student's financial aid forms were complete, a financial aid
12 officer calculated the student's financial aid plan based on a DOE formula and
13 informed the student of the plan. The student could accept or reject the financial aid
14 plan. If a student rejected a financial aid plan, often because the student did not qualify
15 for enough financial aid to cover the entire amount of tuition, it was the Specialist's job
16 to convince the student to accept the financial aid package and enroll by misleadingly
17 offering "scholarships" to help them finance the classes. The "scholarships" were
18 exactly like those described above for Concordia.

19 120. Like Concordia, urgency was a very big and ongoing theme when
20 enrolling U.Mary students. Specialists were placed under constant pressure to enroll
21 a student now as opposed to later, for the earliest upcoming course cycle. Specialists
22 enrolling U.Mary students used exactly the same tactics to pressure prospective
23 students as those explained above for Concordia. The scholarships were used to lure
24 and "hold on" to prospective students. A part of that "holding on" process involved
25 offering incentives for potential students ranging from iPads to books to the
26 "scholarships."

27 121. A lot of Enrollment Specialists for U.Mary had absolutely no background
28 in nursing. Yet they were still doing transcript evaluations for the students that had

1 credits they wanted to transfer in and they were coming back wrong. The students were
2 paying for and scheduled to take classes that they had already taken through another
3 university. No one from U.Mary was doing an official evaluation of the nursing
4 transcript to evaluate credit transfers.

5 4. THE COMPENSATION

6 122. Specialists for U.Mary were specifically hired to enroll students in the
7 online program and retain those students. Nothing related to the student's education
8 beyond that was the Specialist's concern. A Specialist's salary increase was based on
9 the number of enrollments they were able to obtain in a six month period. The
10 minimum enrollment expectation for each Enrollment Specialist is 3-5 enrollments per
11 cycle. Despite the sales-floor atmosphere, Specialist were required to explain to
12 prospective students that theirs was a non-profit institution. All Specialists were
13 provided with a "rubric", which was initially a script and later a guideline for
14 conversations with potential students. The first mandatory criteria of conversations was
15 to "create urgency" for the upcoming start date. Every day, five times a day, each
16 Specialist received a "talk time" report that monitored how much time each enrollment
17 rep was actively speaking to someone. The more talk time a Specialist accrued, the
18 more likely he was to enroll a student. The more students he enrolled, the more likely
19 he was to qualify for "overtime," which was one incentive HotChalk used to
20 encourage sales.

21 123. HotChalk's standard procedure required Specialists to meet an enrollment
22 quota. Specialists who met or exceeded their quota were given tickets to baseball
23 games, gift cards, lunches from various local restaurants and other such incentives.
24 Specialists even won an all-expense paid Las Vegas trip. CEO Edward Fields rewarded
25 the qualifying Specialists with a trip to Las Vegas for a couple of days. The trip was
26 reserved for those who had contributed to what was described as a "milestone profit"
27 for the company.

28 124. In 2012, Zinselmeier explained that, "we have found a way to work

1 around the compensation ban" and instituted the "core values" review explained above.
2 All U.Mary Specialists were all required sign an acknowledgment of this change in
3 their valuations and were told that the document would go into their personnel files.
4 Zinselmeier made it clear to the Specialists that this was just for what he called "CYA"
5 purposes. Our managers openly stated so long as the minimum number of student
6 enrollments is achieved, the "core values" do not matter and that they are nothing more
7 than an effort to disguise the fact that performance and compensation are measured
8 exclusively by reference to student enrollment. Thus, all Enrollment Specialist had to
9 do to meet the minimum core competencies, and receive the minimum core values
10 rating is simply meets their quota of new enrollments.

11 125. When she received her first review, Bolton realized that the reviews were
12 not meaningful. If she met her sales quota, she would receive a good review on the
13 "core competencies" and continue to receive salary increases and bonus incentives. If
14 she failed to achieve her quota of five new enrollments per month, she would receive
15 a negative review on "core competencies."

16 126. Once Specialists were switched from salary to hourly, overtime became
17 another incentive to encourage them to sell the product. The purpose of the overtime
18 was purely to drive the numbers. Sometime around August or September, 2012, James
19 Cheshire told the U.Mary Specialists that unlike HotChalk's Concordia Specialists,
20 who were limited to ten hours overtime based on their enrollment numbers, U.Mary
21 Specialists would be allowed unlimited overtime because they so badly needed a big
22 start and to enroll as many students as possible. U.Mary Specialists' ability to work
23 overtime only lasted from August to November. Overtime was discontinued in
24 November because Hotchalk was unprepared for the overwhelming numner of
25 students. There were not enough teachers, there was scheduling confusion and in
26 general a disorganized mess with which HotChalk had to deal.

27 4. "BE HAPPY, NO DRAMA"

28 127. To Zinselmeier, "Be Happy, No Drama" means, no matter what

1 HotChalk instructs a Specialist to do, no matter how HotChalk treats the Specialist and
2 no matter what unreasonable expectations HotChalk places on the specialist, the
3 Specialist is to do nothing. Specialists can't ask questions, seek clarity and certainly
4 never suggest that HotChalk crosses any lines or that HotChalk should do anything
5 differently. HotChalk told its Specialists, "Be happy you have a job and be happy for
6 the efforts to bend the rules for your benefit."

7 128. Bolton had many conversations with Dearring about the "No Drama, Be
8 Happy" culture. He interpreted her questioning the HotChalk policies, procedures and
9 what she considered to be the manipulation of prospective students, as a direct
10 challenge to the HotChalk culture. He expressed that her ideas conflicted with
11 HotChalk's way of doing things. Dearring and Cheshire told Bolton on several
12 occasions that she wasn't being happy and that her questions, or her refusal to "support
13 the culture" was "creating drama."

14 129. Ultimately, HotChalk terminated Bolton's employment for being
15 "disruptive" in the work environment. She was "disruptive" because she asked
16 questions in open meetings and team huddles, seeking clarification of instructions on
17 policies and directions that seemed improper.

18 C. DAMAGE TO THE GOVERNMENT

19 130. HotChalk's boiler room culture and incentive compensation results in the
20 admission of students to expensive programs when the student's ability to complete the
21 program is dubious at best. Knowing this, HotChalk encourages and actively assists
22 these students in obtaining student loans that are federally insured. A significant
23 number of the students who enroll can't complete the course work and drop out. More
24 still default on their student loans, requiring the federal government to pay the balance
25 owed. This outcome is precisely one of the reasons why incentive based compensation
26 for enrolling students is banned.

27 131. Title IV of the HEA requires that, to be eligible to participate in and
28 receive payment from its loan and grant programs, educational institutions must agree

1 and promise not to provide any commission, bonus or other incentive payment to their
2 student recruiters based directly or indirectly upon success in securing enrollments. 20
3 U.S.C. § 1094(a)(20); 34 C.F.R. § 668. 14(b)(22). The Defendant Institutions entered
4 into such agreements (Program Participation Agreement or "PPA") and made such
5 promises, and submitted and caused to be submitted to the DOE thousands of loan and
6 grant applications.

7 132. Regardless of a signed Program Participation Agreement, HotChalk and
8 the Defendant Institutions are deemed to have agreed to comply with the incentive
9 compensation ban. Defendant Institutions' agreements and promises, and each and
10 every one of their applications, were and are false and fraudulent because, Defendants
11 tied their enrollment specialists' compensation directly to the number of students they
12 enrolled. Over a period of years, in reliance upon the Defendant Institutions' false and
13 fraudulent agreements and promises, the DOE paid out millions of dollars in student
14 grants, payments of loan interest, and repayment of defaulted guaranteed student loans,
15 all used for tuition payments for the online programs of the Defendant Institutions.
16 Each of these requests for payment of such funds constitutes an actionable false claim
17 under the FCA. Each dollar paid or guaranteed to be paid by the DOE constitutes a loss
18 to the government.

19 133. Pursuant to Title IV of the HEA of 1965, 20 U.S.C. §§ 1070 et seq., DOE
20 provides financial assistance in the form of grants, loans, loan guarantees and interest
21 subsidies to eligible students to help defray the costs of education, including, but not
22 limited to, the Federal Perkins Loan Program, 20 U.S.C. § 1087aa et seq., 34 CFR §
23 674 and the Federal Direct Student Loan Program, 20 U.S.C. §§ 1087a et seq., 34 CFR
24 § 685.

25 134. Each of the Title IV programs has specific requirements as a prerequisite
26 to obtaining federal funds. One requirement is that in order to become eligible to
27 receive Title IV funds under these programs, each institution must enter into a PPA
28 with the DOE. 20 U.S.C. § 1094(a); 34 C.F.R. § 668. 14(a)(1). Regardless of the

1 existence of a PPA, however, HotChalk and the Defendant Institutions are deemed to
2 have agreed to have entered into a PPA with the DOE. PPAs expressly "condition the
3 initial and continuing eligibility of the school to participate in a program upon
4 compliance with" the requirements of 20 U.S.C. § 1094 and 34 C.F.R. § 668.14.

5 135. The statute, regulation and PPA explicitly provide that an educational
6 institution is prohibited from providing any commission, bonus, or other incentive
7 payment based directly or indirectly on success in securing enrollments or financial aid
8 to any persons or entities engaged in any student recruiting or admission activities or
9 in making decisions regarding the award of student financial assistance[.]" 20 U.S.C.
10 § 1094(a)(20); 34 C.F.R. § 668. 14(b)(22). This is commonly referred to in the
11 post-secondary education industry as "the incentive compensation ban." Compliance
12 with this ban is an express condition to the initial and continuing eligibility of schools
13 to obtain Title IV funding.

14 136. In each PPA, an institution certifies, "The execution of this Agreement
15 by the Institution and the Secretary is a prerequisite to the Institution's initial or
16 continued participation in any Title IV, HEA Program." Each PPA then states, inter
17 alia, "By entering into this Program Participation Agreement, the Institution agrees that
18 ... (22) It will not provide, nor contract with any entity that provides, -any commission,
19 bonus, or other incentive payment based directly or indirectly on success in securing
20 enrollments or financial aid to any persons or entities engaged in any student recruiting
21 or admission activities or in making decisions regarding the awarding of student
22 financial assistance...."

23 137. To maintain its eligibility to receive Title IV funds, each year the
24 institution also must provide the DOE with an annual compliance audit and financial
25 statements prepared by independent auditors. 20 U.S.C. § 1094(c); 34 C.F.R. §§668.23
26 and 668.25. The audit reports are used to determine whether schools are adhering to
27 applicable requirements for funding, including the incentive compensation ban. As a
28 required part of the audit, the Defendant Institutions certify compliance with the

1 requirements for eligibility to participate in Title IV programs, including the incentive
2 compensation ban.

3 138. Congress enacted the prohibition against paying commissions, bonuses
4 or other incentive payments based on success in recruiting students because it
5 determined that such payments were associated with the enrollment of unqualified
6 students to receive federal student-aid funds and high loan default rates, which in turn
7 resulted in a significant drain on program funds where the government acts as a loan
8 guarantor. When Congress amended the HEA in 1992 to prohibit schools from paying
9 these incentives, it did so based on evidence of serious program abuses, of which
10 incentive compensation was a part. See S. Rep. No. 58, 102d Cong., 1st Sess., at 8
11 ("Abuses in Federal Student Aid Programs") (noting testimony "that contests
12 were held whereby sales representatives earned incentive awards for enrolling the
13 highest number of students for a given period"); H.R. Rep. No. 447, 102d Cong., 2d
14 Sess., at 10, reprinted in 1992 U.S.C.C.A.N. 334, 343 (noting new provisions that
15 "include prohibiting the use of commissioned sales persons and recruiters").

16 139. Congress has specifically prohibited educational institutions from using
17 deceptive practices, including misrepresentations which concern the nature of a
18 school's "financial charges." Among the specified prohibited conduct, an institution
19 shall not engage in false, erroneous or misleading statements concerning offers of
20 scholarships to pay all or part of a course charge. 20 U.S.C. § 1094(c)(3)(A); 34 C.F.R.
21 § 668.73.

22 140. An educational institution is permitted to engage the services of a
23 third-party servicer provided it complies with 20 U.S.C.A. § 1094(c) and 34 C.F.R. §
24 668.25. This statute and regulation requires that an educational institution require, in
25 its contract with the servicer, compliance with all statutory provisions of or applicable
26 to Title IV of the HEA, all regulatory provisions prescribed under that statutory
27 authority, and all special arrangements, agreements, limitations, suspensions, and
28 terminations entered into under the authority of statutes applicable to Title IV of the

1 HEA, including the requirement to use any funds that the servicer administers under
2 any Title IV, HEA program and any interest or other earnings thereon solely for the
3 purposes specified in and in accordance with that program. An institution also is
4 required to include in its contract with the servicer, the servicer's agreement to report
5 to the government violations of the law. Essentially, the government prohibits eligible
6 educational institutions from contracting away to third parties the compliance
7 obligations imposed on the institutions.

8 141. After a school becomes eligible to receive Title IV funds by entering into
9 a PPA, claims for payment of those funds can be made in various ways. Under some
10 programs, students submit requests for funding directly to the DOE, or to the DOE
11 with the assistance of schools, while under other programs, students and schools jointly
12 submit requests for loans to private lenders which are guaranteed by state guaranty
13 agencies that are, in turn, insured by the DOE, which pays only in the event of a
14 student default.

15 142. With respect to all Title IV programs, the disbursement of federal funds
16 rests on required statements of eligibility made by schools that were necessary for
17 requests for payment to be considered.

18 143. By signing their PPAs, the Defendant Institutions each acknowledged
19 their responsibilities to act as fiduciaries, to comply with all Title IV program
20 requirements and to account for the federal funds entrusted to them.

21 D. Defendants' Participation in HEA Title IV Programs

22 144. The Defendant Institutions sign and submit PPAs to the DOE, thereby
23 certifying their compliance with the incentive compensation ban, their future
24 compliance with all applicable statutory and regulatory provisions, and compliance
25 with the requirement that the institution will use funds it receives under any Title IV,
26 HEA program and any interest or other earnings thereon, solely for the purposes
27 specified in and in accordance with that program. The Defendant Institutions
28 additionally certify that with certain exceptions, they will not provide any commission,

1 bonus, or other incentive payment based directly or indirectly upon success in securing
2 enrollments or financial aid to any person or entity engaged in any student recruiting
3 or admission activities or in making decisions regarding the awarding of title IV, HEA
4 program funds. Thus, the Defendant Institutions certify that they will not engage in the
5 payment of incentive compensation based either on enrollments or financial aid.

6 145. The Defendant Institutions are currently operating under approved PPAs
7 and cannot, in fact, operate in the Title IV environment without a current PPA. As a
8 matter of law, each Defendant Institution is deemed to be operating under a PPA. See
9 20 USC §1094 and 34 CFR § 668.14. Each submits a variety of claims to the
10 government for Title IV funds that it knows to be false based upon its non-compliance
11 with the incentive compensation ban. During each academic year starting July 2010
12 through March 2013, the Defendant Institutions secured enrollments in their online
13 programs, and received Title IV funds for students enrolled in their online programs
14 marketed by HotChalk. Additionally, during each academic year starting July 2010
15 through March 2013, students obtained loans guaranteed by the government, or in
16 some cases, financial aid directly from the government.

17 VI. CLAIMS FOR DEFENDANTS' STATUTORY VIOLATIONS

18 146. Defendants are liable to the United States under the FCA because of their
19 use of false statements to obtain HEA, Title IV loan funds. Specifically, in requesting
20 and receiving millions of dollars annually, Defendant Institutions falsely represented
21 that they were in compliance with the HEA's prohibitions against using incentive
22 payments for enrollments, a key pre-condition to the receipt of any HEA Title IV
23 funds.

24 147. The Defendant Institutions falsely certified that they were in compliance
25 with the ban on incentive compensation for enrollments and without such certifications
26 of compliance, Defendant Institutions would not have been permitted to continue to
27 participate in Title IV HEA activities nor to receive Title IV funds from the
28 government. In submitting PPAs which falsely certified compliance, each Defendant

1 Institution knew the PPAs were false and acted knowingly or in reckless disregard of
2 the truth or falsity of the information provided to the United States. The Defendant
3 Institutions thereby fraudulently caused the United States to pay Title IV HEA funds
4 to themselves by false and fraudulent PPAs, compliance audit and financial statement
5 audit opinions. Defendant Institutions certified to the DOE their compliance with the
6 ban on incentive compensation in order to collect federal funds for which they were
7 ineligible, in violation of 31 U.S.C. § 3729(a)(1)(A), (B), (C), (G).

8 148. HotChalk violated the law by knowingly receiving incentive
9 compensation from the Defendant Institutions – both Concordia and U. Mary – for
10 each student its enrollment specialists enrolled, and by knowingly paying incentive
11 compensation to its enrollment specialists in the form of salary increases, “overtime”
12 compensation, per-enrollment bonuses, prizes, gifts and other incentives.

13 149. U. Mary conspired with HotChalk to violate the incentive compensation
14 ban. U. Mary did this by agreeing, expressly or impliedly, with HotChalk for HotChalk
15 enrollment specialists’ compensation to be tied directly or indirectly to the number of
16 students enrolled in the online U. Mary program.

17 150. Concordia conspired with HotChalk to violate the incentive
18 compensation ban. Concordia did this by agreeing, expressly or impliedly, with
19 HotChalk for HotChalk enrollment specialists’ compensation to be tied directly or
20 indirectly to the number of students enrolled in the online Concordia programs.

21 151. Defendants’ fraudulent conduct that violates the FCA in several ways.
22 First, In order to be eligible to participate and to continue to participate in any Title IV
23 programs, the Defendant Institutions entered into Program Participation Agreements
24 (“PPAs”) with the DOE in which they falsely stated that they were obeying and would
25 obey Title IV’s incentive compensation ban, when in fact they were not and are not in
26 compliance with that ban, and they knew that their statements were false.

27 152. Every year, the Defendant Institutions knowingly falsely certify that they
28 are complying with 20 U.S.C. § 1094(a)(20) by promising that they are not and that

1 they will not provide any commission, bonus, or other incentive payment based directly
2 or indirectly on securing enrollments to any person engaged in student recruiting or
3 admission activities, when in fact (a) Defendant Institutions routinely and knowingly
4 compensates and awards HotChalk based on the numbers of students enrolled; and (b)
5 Defendants HotChalk, Edward Fields, James Cheshire and Mark Zinselmeier routinely
6 and knowingly compensates and awards its enrollment and admissions employees
7 based on the numbers of students enrolled.

8 153. Third, numerous times every year, the Defendant Institutions submit and
9 cause students to submit loan applications to the DOE that are false and fraudulent in
10 at least three ways: (a) the Defendant Institutions knowingly use, and cause students
11 to use, the false PPAs and annual certifications, which are necessary prerequisites to
12 the Defendant Institutions' eligibility for Title IV funds; and (b) in each and every loan
13 application, the Defendant Institutions falsely certify that they are in compliance with
14 all statutory and regulatory requirements on which program eligibility and payment are
15 conditioned, misrepresentations that the Defendant Institutions know to be untrue
16 because of their ongoing knowing and intentional noncompliance with the incentive
17 compensation ban. This noncompliance is carried out by Concordia and previously by
18 U. Mary through and with the active participation and assistance of HotChalk and (c)
19 Defendants engage in substantial misrepresentations of the nature of their educational
20 programs by deliberately concealing from students and prospective students the very
21 existence of HotChalk, allowing HotChalk to provide a "turnkey partnership
22 opportunity" - disguised as Concordia or U. Mary- consisting of recruitment,
23 enrollment and admission, financial aid, curriculum and online course instructors.
24 Defendants also engage in substantial misrepresentations concerning offers of
25 scholarships to pay all or part of a course charge by falsely and deceptively offering
26 non-existent "scholarships" or grants to make up for any shortfall between the course
27 charge less available financial aid the student's ability to pay.

28 154. This is a claim for treble damages under the False Claims Act, 31 U.S.C.

§§ 3729, et seq. as amended.

155. Through the acts described above, Defendants knowingly submitted or caused to be submitted to the United States government false or fraudulent claims for student financial aid. The United States, unaware of the falsity, paid the Defendants for claims that would otherwise not have been allowed.

156. By reason of the Defendants' fraudulent acts, the United States government has been damaged and continues to be damaged in the amount of millions of dollars.

VII. JURY DEMAND

157. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs/Relators hereby demand trial by jury.

VIII. ATTORNEY FEES AND COSTS

158. Pursuant to 31 U.S.C. §3729(a)(3) and 31 U.S.C. §3730, Plaintiffs/Relators seek all reasonable expenses which the Court finds to have been necessarily incurred, plus reasonable attorney fees and costs.

WHEREFORE, Plaintiffs/Relators Toi, and Jeffri Bolton seek judgment against Defendants HotChalk, Inc., Concordia University, University of Mary, Edward Fields, James Cheshire and Mark Zinselmeier and that this Court grant them all monetary and equitable relief available under each statute, including but not limited to actual damages, trebled damages, statutory penalties, prejudgment and post-judgment interest, expenses, attorneys' fees and costs. In addition, Plaintiffs/Relators request such other and further relief to which they are entitled.

May 27, 2014

Date _____

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document(s) was served upon all interested parties via the United States District Court's electronic transmission services and/or otherwise by First Class Mail on May 27, 2014.

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